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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

February 10, 2017

David Busby, Plant Manager
Yvette Gassó, SHEQ Manager
Mauser USA LLC
9449 Santa Anita Ave.
Rancho Cucamonga, CA 91730

VIA FIRST CLASS MAIL

National Registered Agents, Inc.
Registered Agent for Mauser USA, LLC (Entity Number C201314110096)
818 West Seventh Street - Suite 930
Los Angeles, CA 90017

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Mr. Busby and Ms. Gassó:

I am writing on behalf of the Center for Biological Diversity ("CBD") in regard to violations of the Clean Water Act (the "Act") that CBD believes are occurring at Mauser USA LLC's industrial facility located at 9449 Santa Anita Ave. in Rancho Cucamonga, California ("Facility"). CBD is a non-profit public benefit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. CBD has members living in the community adjacent to the Facility and the Santa Ana River Watershed. CBD and its members are deeply concerned with protecting the environment in and around their communities, including the Santa Ana River Watershed. This letter is being sent to Mauser USA LLC, David Busby, and Yvette Gassó as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Mauser").

This letter addresses Mauser's unlawful discharge of pollutants from the Facility to channels that flow into the Santa Ana River. The Facility is discharging storm water pursuant to

Notice of Violations and Intent to File Suit

National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CBD refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The Waste Discharger identification number for the Facility listed on documents submitted to the Santa Ana Regional Water Quality Control Board ("Regional Board") is 8 361024170. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CBD hereby places Mauser on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CBD intends to file suit in federal court against Mauser under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

CBD is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with a field office in Los Angeles. The Center works through science and environmental law to advocate for the protection of endangered, threatened, and rare species and their habitats throughout the United States and abroad. The Center has more than 50,000 active members, including over 3,000 in the LA area, and over 1.2 million online activists. The Center works to ensure the long-term health and viability of animal and plant communities across the United States and elsewhere, and to protect the habitat these species need to survive. The Center believes that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked. To further this mission, CBD actively seeks federal and state implementation of the Clean Water Act. Where necessary, CBD directly initiates enforcement actions on behalf of itself and its members.

Members of CBD reside in San Bernardino County, and near the Day Creek Channel and the Santa Ana River (hereinafter "Receiving Waters"). As explained in detail below, the Facility continuously discharges pollutants into the Receiving Waters, in violation of the Clean Water Act and the General Permit. CBD members use the Receiving Waters to swim, boat, kayak, bird watch, view wildlife, photograph, hike, bike, walk, and run. Additionally, CBD members use the waters to engage in scientific study through pollution and habitat monitoring and restoration

activities. The unlawful discharge of pollutants from the Facility into the Receiving Waters impairs CBD members' use and enjoyment of these waters. Thus, the interests of CBD's members have been, are being, and will continue to be adversely affected by the Facility's failure to comply with the Clean Water Act and the General Permit.

In its Notice of Intent to Comply with the Terms of the General Permit ("NOI"), Mauser certifies that the Facility is classified under SIC code 3089, a manufacturer of plastics products. The Facility collects and discharges storm water from its 205,709 square foot industrial site through at least one outfall. On information and belief, CBD alleges the outfall discharges storm water that is commingled with runoff from the Facility's industrial areas. The outfall discharges to channels that flow into Day Creek Channel, which flows into Reach 3 of the Santa Ana River.

The Regional Board has identified beneficial uses of the Santa Ana River, including its tributary, Day Creek Channel, and established water quality standards for these waters in the "Water Quality Control Plan for the Santa Ana River Basin (Region 8)," generally referred to as the Basin Plan. See http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml. The beneficial uses of these waters include, among others, groundwater recharge; water contact recreation; non-contact water recreation; wildlife habitat; warm freshwater habitat; rare, threatened or endangered species; and spawning, reproduction, and development.

The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 3-3. Contact recreation use includes fishing and wading. *Id.*

The Basin Plan includes a narrative toxicity standard which states that "[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health." *Id.* at 4-20. The Basin Plan includes a narrative oil and grease standard which states that "[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-14. The Basin Plan includes a narrative suspended and settleable solids standard which states that "Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses..." *Id.* at 4-16. The Basin Plan provides that "[t]he pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5..." *Id.* at 4-18. The Basin Plan contains a narrative floatables standard which states that "[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-10.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology

economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).¹ The following benchmarks have been established for pollutants discharged by Mauser: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; and oil & grease (“O&G”) – 15 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; and O&G – 15 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0 - 9.0 s.u.; TSS – 400 mg/L; and oil & grease (“O&G”) – 25 mg/L.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit

Mauser has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation

¹ The Benchmark Values can be found at:
http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Mauser has discharged and continues to discharge storm water with unacceptable levels of TSS and pH in violation of the General Permit. Mauser's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

On December 16, 2016; December 11, 2015, and November 3, 2015, Mauser measured pH in storm water discharged from the Facility with a level of 6. On December 2, 2014, Mauser measured pH in storm water discharged from the Facility with a level of 6.4. These discharges from the Facility are below the permissible range of 6.5 -8.5 for pH established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
12/11/2015	Total Suspended Solids	390 mg/L	100 mg/L	SW lot Discharge
11/3/2015	Total Suspended Solids	200 mg/L	100 mg/L	SW lot Discharge
2015-2016 reporting year	Total Suspended Solids	295 mg/L	100 mg/L	All discharge points ²
2/23/2015	Total Suspended Solids	300 mg/L	100 mg/L	SW lot Discharge

² This value represents the average of all TSS measurements taken at the Facility during the 2015-2016 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

The information in the above table reflects data gathered from Mauser's self-monitoring during the 2014-2015 wet season and the 2015-2016 reporting year. CBD notes that Mauser's sampling results from the 2015-2016 reporting year have now placed the Facility in Level 1 Status pursuant to the General Permit. CBD alleges that since at least March 27, 2013, Mauser has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for TSS.

CBD's investigation, including its review of Mauser's Storm Water Pollution Prevention Plan ("SWPPP"), Mauser's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable EPA benchmark values and NALs, indicates that Mauser has not implemented BAT and BCT at the Facility for its discharges of TSS and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Mauser was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened, and at a minimum on March 27, 2013, when the Facility first received coverage under the General Permit. Thus, Mauser is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CBD alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since March 27, 2013, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CBD alleges that Mauser has discharged storm water containing impermissible and unauthorized levels of TSS and pH in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.³

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of TSS and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions

³ The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Rancho Cucamonga located approximately 3.8 miles from the Facility. Rain data was accessed from the National Oceanic and Atmospheric Administration at <https://www.ncdc.noaa.gov/cdo-web/>. (Last accessed on February 10, 2017).

brought pursuant to the federal Clean Water Act, Mauser is subject to penalties for violations of the General Permit and the Act since at least March 27, 2013.

Further, CBD puts Mauser on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which Mauser must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations, including Mauser's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented best management practices ("BMPs") that achieve BAT/BCT.⁴ Finally, even though Mauser has submitted an Exceedance Response Action Plan(s) pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

B. Failure to Comply with Special Requirements for Plastic Materials.

Section XVIII of the 2015 Permit sets forth "Special Requirements" for facilities that handle Plastic Materials. The 2015 Permit defines Plastic Materials as including the following types of sources of Plastic Materials: "virgin and recycled plastic resin pellets, powders, flakes, powdered additives, regrind, dust, and other types of preproduction plastics with the potential to discharge or migrate off-site." 2015 Permit, Findings, P(73). The 2015 Permit requires Facilities that handle Plastic Materials to implement specific BMPs to eliminate discharges of plastic in storm water.

At a minimum, Plastics Facilities are required to implement and include the following measures in the facility's SWPPP:

- a. Containment systems at each on-site storm drain discharge location down gradient of areas containing plastic material. The containment system shall be designed to trap all particles retained by a 1mm mesh screen, with a treatment capacity of no less than the peak flow rate from a one-year, one-hour storm.
- b. When a containment system is infeasible, or poses the potential to cause an illicit discharge, the facility may propose a technically feasible alternative BMP or suite of BMPs. The alternative BMPs shall be designed to achieve the same or better performance standard as a 1mm mesh screen with a treatment capacity of the peak flow rate from a one-year, one-hour storm. Alternative BMPs shall be submitted to the Regional Water Board for approval.

⁴ The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

- c. Plastics Facilities shall use durable sealed containers designed not to rupture under typical loading and unloading activities at all points of plastic transfer and storage.
- d. Plastics Facilities shall use capture devices as a form of secondary containment during transfers, loading, or unloading Plastic Materials. Examples of capture devices for secondary containment include, but are not limited to catch pans, tarps, berms or any other device that collects errant material.
- e. Plastics Facilities shall have a vacuum or vacuum-type system for quick cleanup of fugitive plastic material available for employees.
- f. Pursuant to Water Code section 13367(e)(1), Plastics Facilities that handle Plastic Materials smaller than 1mm in size shall develop a containment system designed to trap the smallest plastic material handled at the facility with a treatment capacity of at least the peak flow rate from a one-year, one-hour storm, or develop a feasible alternative BMP or suite of BMPs that are designed to achieve a similar or better performance standard that shall be submitted to the Regional Water Board for approval.

2015 Permit, § XVIII(A)(1). The 2015 Permit provides two exceptions for this requirement. The first is if the discharger has submitted a valid No Exposure Certification via SMARTS. *Id.*, § XVIII(A)(2)(a). The second is an exception from the requirement to install a containment system if a suite of eight required BMPs is implemented. *Id.*, § XVIII(A)(2)(b).

On information and belief, CBD alleges that Mauser's Facility handles Plastic Materials as that term is defined in the 2015 Permit. On information and belief, CBD alleges that the Facility has not implemented a proper containment system, or alternate suite of eight BMPs, as required by the 2015 Permit. The Facility's SWPPP makes no mention of the required sealed containers for loading and unloading activities. These failures to comply with the Special Requirements for Plastic Materials from the Facility are ongoing. Each day that the Facility operates without complying with the Special Requirements for Plastic Materials is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Mauser is subject to penalties for violations of the General Permit and the Act since July 1, 2015.

C. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures

that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Conduct Sampling and Analysis

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit shortens the preceding no discharge period to 48 hours. *See* 2015 Permit, § XI(B)(1). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and “shall explain in the Annual Report why the first storm event was not sampled.” *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements. Samples must be collected from each drainage area at all discharge locations and be representative of storm water associated with the Facility’s industrial activity any commingled discharges. *See* 2015 Permit, § XI(B)(4); *see also* 1997 Permit § B(5)(a).

On information and belief, CBD alleges that during the 2013-2014 wet season, Mauser failed to collect and analyze a storm water sample from any storm events. During the second half of the 2015-2016 reporting year, CBD alleges that the Facility failed to collect and analyze any storm water discharges in accordance with the General Permit. During the first half of the 2016-2017 reporting year, CBD alleges that the Facility failed to collect and analyze a second storm water discharges in accordance with the General Permit. CBD alleges that local precipitation data compared to dates when the Facility did collect storm water samples shows that discharges occurred on several dates during each of those wet seasons. Specifically, CBD alleges that discharges occurred on the following dates:

- October 29, 2013
- November 21, 2013
- December 20, 2013
- February 7, 2014

- February 27, 2014
- April 1, 2014
- January 6, 2016
- February 1, 2016
- February 18, 2016
- April 25, 2016
- December 16, 2016

The above results in at least five violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Mauser is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 27, 2013.

ii. Failure to Conduct Visual Observations of Storm Water Discharges

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, CBD alleges that Mauser failed to conduct monthly visual observations of storm water discharges during numerous months during the past five years. On information and belief, based on local precipitation data compared to the dates in which the Facility did conduct monthly visual observation of storm water discharges, CBD alleges that Mauser failed to conduct monthly visual observations of storm water discharges at its outfalls during the following months:

- 2013 – April, May, October, November, December
- 2014 – February, April, November, December
- 2015 – January, February, April, May

This results in at least 13 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Mauser is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 27, 2013.

D. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). 1997 Permit, Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CBD indicates that Mauser has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Mauser has failed to event complete any of its past ACSCE Reports, in violation of the General Permit.

CBD puts Mauser on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Mauser is in ongoing violation of the General Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Mauser is subject to civil penalties for all violations of the CWA occurring since March 27, 2013.

E. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water

limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. § 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

Despite these clear BMP requirements, Mauser has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The Facility's SWPPP fails to comply with Section X(D)(1) of the 2015 Permit. Specifically, the SWPPP fails identify alternate team members to implement the SWPPP.

The SWPPP fails to comply with Section X(D)(2)(d) of the 2015 Permit by failing to document the Facility's scheduling operating hours.

The SWPPP fails to comply with the requirements of Section X(E) of the 2015 Permit. Specifically, the SWPPP map fails to include a north arrow and a legend; depict the Facility boundary; depict the location of storm water collection and conveyance systems; indicate where materials are directly exposed to precipitation; and fails to identify all areas of industrial activity.

The SWPPP fails to comply with the requirements of Section X(F) of the 2015 Permit, failing to include a list of industrial materials handled at the facility, and the locations where each material is stored, received, shipped, and handled, as well as the typical quantities and handling frequency.

The SWPPP fails to comply with the requirements of Section X(G)(1)(a) of the 2015 Permit. The SWPPP fails to describe each industrial process at the Facility.

The SWPPP fails to comply with the requirements of Section X(G)(1)(b) of the 2015 Permit. The SWPPP fails to describe each material handling and storage area at the Facility.

The SWPPP fails to comply with the requirements of Section X(G)(1)(c) of the 2015 Permit. The SWPPP fails to describe all industrial activities that generate a significant amount of dust or particulate that may be deposited within the Facility boundaries.

The SWPPP fails to comply with the requirements of Section X(G)(1)(e) of the 2015 Permit. The SWPPP fails to contain an assessment of the non-storm water discharges ("NSWDs") at the Facility and a description of how all NSWDs have been eliminated. On information and belief, CBD alleges that Mauser has failed to properly assess the Facility for NSWDs.

The SWPPP fails to comply with the requirements of Section X(G)(2) of the 2015 Permit. The SWPPP fails to a narrative assessment of all areas of industrial activity with potential industrial pollutant sources. Mauser has failed to identify where the minimum BMPs in different areas of the Facility will not adequately reduce the pollutants in the Facility's storm water dischargers and to identify advanced BMPs for those areas.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement and maintain the required minimum BMPs for material handling and waste management. The SWPPP fails to implement any advanced BMPs. The SWPPP fails to identify and justify each minimum BMP or applicable BMP not being implemented at the Facility because they do not reflect best industry practice considering BAT/BCT.

The SWPPP fails to comply with the requirements of Section X(I) of the 2015 Permit. The SWPPP fails to include a Monitoring Implementation Plan that complies with the 2015 Permit.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded the EPA benchmarks and NAL for TSS, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges consistent with the BAT and BCT requirements. Despite these exceedances, Mauser has failed to sufficiently update the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges consistent with reductions achieved by implementing BAT and BCT at the Facility.

CBD puts Mauser on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CBD will include additional violations as information and data become available. Mauser is subject to civil penalties for all violations of the CWA occurring since March 27, 2013.

III. Persons Responsible for the Violations.

CBD puts Mauser USA LLC, David Busby, and Yvette Gassó on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CBD puts Mauser USA LLC, David Busby, and Yvette Gassó on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of the Center for Biological Diversity is as follows:

Emily Jeffers
Staff Attorney
Center for Biological Diversity
1212 Broadway, St. #800
Oakland, CA 94612
Tel. (510) 844-7100

V. Counsel.

CBD has retained legal counsel to represent it in this matter. Please direct all communications to:

David Busby and Yvette Gassó
Mauser USA LLC
February 10, 2017
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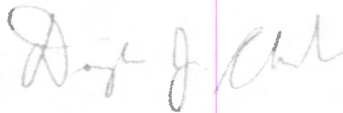
Douglas J. Chermak
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VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Mauser to a penalty of up to \$37,500 per day per violation for all violations occurring since October 28, 2011, up to and including November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015. In addition to civil penalties, CBP will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CBD believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CBD intends to file a citizen suit under Section 505(a) of the Act against Mauser and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CBD would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CBD suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CBD does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Center for Biological Diversity

SERVICE LIST – via certified mail

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Kurt V. Berchtold, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

ATTACHMENT A
Rain Dates, Mauser USA LLC, Rancho Cucamonga, CA

4/15/2013	2/23/2015	3/8/2016
5/6/2013	2/24/2015	3/12/2016
5/7/2013	3/1/2015	4/9/2016
9/10/2013	3/2/2015	4/25/2016
10/10/2013	4/8/2015	4/26/2016
10/29/2013	4/26/2015	5/7/2016
11/21/2013	5/8/2015	10/24/2016
11/22/2013	5/15/2015	10/25/2016
11/30/2013	5/23/2015	11/21/2016
12/20/2013	7/19/2015	11/27/2016
2/7/2014	7/20/2015	11/28/2016
2/27/2014	9/10/2015	12/16/2016
2/28/2014	9/15/2015	12/17/2016
3/1/2014	9/16/2015	12/22/2016
3/2/2014	10/5/2015	12/23/2016
3/26/2014	10/6/2015	12/24/2016
4/1/2014	10/17/2015	12/31/2016
4/26/2014	11/3/2015	1/1/2017
8/3/2014	11/4/2015	1/5/2017
9/17/2014	12/11/2015	1/6/2017
11/1/2014	12/14/2015	1/9/2017
11/2/2014	12/20/2015	1/10/2017
11/21/2014	12/22/2015	1/11/2017
12/1/2014	12/23/2015	1/12/2017
12/3/2014	1/6/2016	1/13/2017
12/4/2014	1/7/2016	1/19/2017
12/12/2014	1/8/2016	1/20/2017
12/13/2014	2/1/2016	1/21/2017
12/17/2014	2/18/2016	1/23/2017
1/11/2015	2/19/2016	1/24/2017
1/12/2015	3/6/2016	2/7/2017
1/27/2015	3/7/2016	